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ABSTRACT

The President has recently signed a package of technical amendments for Chapters 1 and 2 of the Education Consolidation and Improvement Act of 1981. Among the new provisions are a number which restore some of the targeting flexibility authorizations lost with the creation of Chapter 1. One of the most significant new provisions requires State education agencies to conduct an evaluation of the Chapter 1 programs at least once every two years, and another calls for a national assessment of the Chapter 1 program to be conducted by the Secretary of Education. The "all such children" clause has been deleted from the law in order to remove ambiguity about which children are entitled to special assistance from the school district. Parent involvement in the program is clarified and strengthened by the new legislation; local education agencies are required to have policies assuring parental consultation in the planning, development, and operation of programs. Technical amendments to Chapter 2 contain provisions that strengthen and reinforce local, as opposed to State, control over the use of Chapter 2 funds. (KH)

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PRESIDENT SIGNS TECHNICAL AMENDMENTS BILL FOR CHAPTERS 1 AND 2

After two unsuccessful tries to enact correcting legislation for ECIA, the Congress and the President have agreed on a package of technical amendments for Chapters 1 and 2 of the Education Consolidation and Improvement Act of 1981. Our readers will recall that the Congress first passed comprehensive technical amendments during the "lame duck" session of Congress in 1982. (See December 1982/January 1983 Newsletter) That bill was vetoed by the President for at least three reasons, one of which, the definition of "currently migratory child," remains unchanged in these amendments.

The second attempt to pass technical amendments was initially reported on in our April/May 1983 Newsletter and has since undergone a number of changes. The final amendments, P.L. 98-211 and the Conference Report, No. 98-574 which contains some explanatory language, are available (free of charge) from the House Documents Room, The Capitol, Room H-226, Washington, D. C. 20515.

These technical amendments are designed to improve the implementation of ECIA and in some instances significant changes have been enacted.

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A. Chapter 1

Flexibility to Continue Title I-Type Expenditures

The Title I legislation contained many targeting flexibility provisions which were lost when the program became Chapter 1. Although the Department of Education in its Non-Regulatory Guidance permitted school officials to use many of those earlier Title I provisions, because of the continuing uncertainty about the legal standing of a nonregulating document, many concerned about the operation of the program sought the inclusion in the statute of those flexibility authorizations. These provisions include:

1. Allowing school districts to continue serving school attendance areas in which at least 25% of the children are from low-income families;

2. Permitting school districts to serve school attendance areas with substantially higher numbers or percentages of educationally deprived children than other attendance areas with higher concentrations of children from low-income families, if the SEA finds that such action will not impair the delivery of compensatory education service to low-income students;

3. Permitting LEAs to use Chapter 1 funds for educationally deprived children who attend schools in ineligible school attendance areas when the proportion of low-income children attending the schools is more or less equal to the proportion of low-income children residing in eligible school attendance areas of the LEA. (This provision is useful, for example, in cases where there has been a desegregation court order affecting an area served by a particular school, and many of the white children in the area choose to attend private school while the black children attend the public school; the income level of the group of children eligible to attend the school may be higher than the income level of the children actually attending the school);

4. Designating an attendance area which was eligible in either of two preceding fiscal years as eligible for a single additional fiscal year even if it does not currently qualify as eligible;

5. Permitting LEAs, with the approval of the SEA, to skip eligible schools if they are receiving, from non-federal funds, services of the same nature and scope as would otherwise be provided under Chapter 1. This addition, and other sections of Chapter 1, indicate Congressional intent that schools be first ranked according to their concentration of poverty;

6. Allowing school districts to serve, for an additional year, children who were identified in a previous year as being in greatest need of assistance and who continue to be educationally deprived, although they no longer are in greatest need of assistance;

7. Allowing educationally deprived children who begin participation in a Chapter 1 project, but are transferred during the school year to an ineligible school, to continue to participate in a Chapter 1 project for the remainder of the school year in which the transfer occurred;

8. Permitting LEAs to skip educationally deprived children in greatest need of services if such children are receiving, from non-federal sources, services of the same nature and scope as they would receive under Chapter 1;

9. Permitting LEAs, in school attendance areas where at least 75% of the children are from low-income families, to use Chapter 1 funds for school-wide projects to upgrade the entire educational program in the school. Projects under this section must comply with the provisions of §133(b) of Title I;

10. Permitting personnel paid with Chapter 1 funds to engage in limited non-instructional duties (i.e. playground duty, lunchroom monitoring, etc.) which are assigned to other similar school personnel. The amendment, however, limits Chapter 1 personnel to performing these duties in the same proportion as other similarly situated personnel at the same school, or 10% of their total time, whichever is less. This prevents Chapter 1 personnel from spending a disproportionate amount of their time on non-instructional matters rather than on assisting Chapter 1 children.

Evaluation

One of the most significant inclusions in these amendments is a new provision which requires state education agencies to conduct an evaluation of the Chapter 1 programs at least every two years. The results of these state evaluations will be available to the public. The SEA must also collect data on the race, age and sex of the children in the program and the number, by grade level, served by the program. Local education agencies are now required to use the results of local evaluations to improve their Chapter 1 programs and projects.

National Assessment

Another critical provision which was added to the Chapter 1 program is a national assessment of the program, which will be conducted under the auspices of the Secretary of Education through independent studies and analysis by the National Institute of Education (NIE). The assessment will include descriptions and assessments of services delivered; recipients of services; background and training of the teachers and staff; allocation of funds, and a national profile of LEA implementation activities. A preliminary report on Chapter 1 is due July 1986 and the final report will be ready January 1987.

The assessment information will provide Congress and the public with vital information about how the program operates, who it serves and recommendations for improvement.

Another significant change enacted by this law will delete the "all such children" clause in the section of the law allowing school districts to use some or all of their Chapter 1 funds to serve "all such" [low-income and/or educationally deprived] "children" in the districts. There was much ambiguity as to whether this provision permitted school districts to

serve all its low-income or all its educationally disadvantaged children, or all those meeting both criteria. Because of its potential for abuse and dilution of Chapter 1 funds, Congress decided to eliminate the provision altogether. Along with the elimination of this part of the law, there are two additions which, when read together, reinforce and strengthen the law by requiring school districts to serve children in greatest need while granting flexibility to continue to serve children once but no longer in greatest need.

Parental Involvement

This legislation clarifies and strengthens the requirement for parent involvement in the program.

Section 556(b)(3) requires LEAs to provide assurances that Chapter 1 programs "are designed and implemented in consultation with parents and teachers of the children served." These amendments add a new Section 556(e):

> (1) A local education agency shall convene annually a public meeting, to which all parents of eligible students shall be invited, to explain to parents the programs and activities provided with funds made available under this chapter, and (2) if parents desire further activities, the local education agency may, upon request, provide reasonable support for such activities.

It is important to note that this annual meeting is not to be considered the consultation with parents but is to provide the initial opportunity for parents to meet each other to facilitate continued communication. According to the House Education and Labor Committee this initial meeting is to advise parents of the existence and nature of the program and their right to consultation. School districts may elect to hold more than one such meeting if the district is large and one meeting site might not meet their needs. If parents desire further activities, the amendment allows the LEA to provide reasonable support for those activities. This support includes reasonable access to meeting space, materials, program information, and training. In short, expenditures allowed under Title I are still permissible under Chapter 1.

GEPA

Our readers will recall that the earlier version of the technical amendments had made several sections of the General Education Provisions Act (GEPA) inapplicable to ECIA. Later, however, there was a controversy between the House and Senate as to the applicability of §427 (parental involvement). The House version, which would have made §427 apply to the legislation, failed. By striking the applicability to this program, however, the Conference Managers' Report is explicit about the intent of Congress. It says:

> The conferees agree that, in eliminating the House provision regarding applicability of Sec. 427 of GEPA to ECIA, the response of the local education agencies to assure adequate parent involvement shall in no way be diminished. Accordingly, local education agencies shall have policies to assure parental consultation in the planning, development, and operation of programs; assure that parents have had an opportunity to express their views concerning those policies; and have policies to assure the adequate provision of program plans and evaluations to parents and the public. (Congressional Record, daily edition, Nov. 28, 1983, p. H10602).

We should note once again that while Parental Advisory Councils are no longer required for the local district programs, they are still required for all the migrant programs.

B. Chapter 2

Local Control

The technical amendments contain two provisions that strengthen and reinforce local, as opposed to state, control over the use of Chapter 2 funds. First, §561(b) of Chapter 2 is amended to state that local education agencies should have basic responsibility for implementing programs "because they are most likely to be able to design programs to meet the educational needs of the students in their own districts." LEAs will also be required to provide assurances that, apart from technical and advisory assistance and monitoring compliance with Chapter 2, the State educational agency has exercised, and will exercise, no influence in the decision-making processes of LEAs as to the expenditures made pursuant to its Chapter 2 application. LEAs are required, however, to ensure that each expenditure of funds under Chapter 2 is for the purpose of meeting the educational needs within the schools of the LEA. These provisions reinforce local control over decisions about Chapter 2 programs and in fact prohibit state interference in these decisions. Thus, LEA discretion in determining how they will use their Chapter 2 funds is strengthened, while SEAs are severely restricted in attempting to influence local decisions on this issue.

The technical amendments also limit SEA rulemaking authority regarding local programs, thereby furthering reducing any control SEAs may have had over local activities. They amend § 591 of Chapter 2 by adding language stating that Chapter 2 should not be interpreted to authorize state regulations, applicable to LEA Chapter 2 programs or projects, except as to State audit and financial responsibilities. This section also states that Chapter 2 does not encourage, pre-empt, or prohibit regulations issued pursuant to state law which are not in conflict with the provisions of Chapter 2. Any State rule or policy relating to the administration

and operation of programs funded under Chapter 2, however, must be identified as a State-imposed requirement.

It is clear from these provisions that Congress believes LEAs, not the State or federal government, should determine how Chapter 2 funds will be used in local school districts. SEAs are only to administer the program and ensure, through audits and fiscal requirements, that the funds are being used for Chapter 2 purposes. These provisions will probably limit any input States might have had in setting priorities for local expenditures of Chapter 2 funds.

Other provisions in the amendments relating to State administration include certifying that LEA applications meet recordkeeping, fiscal, and other compliance requirements before allocating funds to them. Also, LEAs receiving less than an average of $5,000 each year do not have to be audited more frequently than once every five years.

Distribution Formulas

With regard to state Chapter 2 distribution formulas, the Conference Report accompanying the bill states that it is the intent of the conferees that Chapter 2 be interpreted such that State Chapter 2 distribution formulas provide adjusted allocations to LEAs with the greatest numbers or percentages of high cost children rather than allocations to LEAs with any number or percentage of such children. This statement addresses a concern that FEP has repeatedly raised with the Department of Education--that state Chapter 2 distribution formulas are not adequately taking into account the needs of school districts with the highest concentrations of high cost children. By requiring SEAs to concentrate additional funds in districts with the greatest needs, this problem will, hopefully, be partly remedied.

Finally, the amendments permit the use of Chapter 2 funds, until September 30, 1983, to assist in phasing out programs, previously folded into the block grant, and to promote an orderly transition to operations under Chapter 2. This provision was added to assist school districts that previously received large categorical grants (primarily to aid school desegregation efforts under the Emergency School Aid Act) that were drastically cut under Chapter 2.